



## **ABCs of OCI: Know You Don't**

### **The Science Analysis Contract**

The Science Analysis contract provides a very broad range of support to the Code 600 Directorate, and includes efforts such as science research, mission planning and execution, science instrument development support, IT systems support, and Education and Public Outreach. The Goddard Science Directorate likes the flexibility of the Statement of Work (SOW) for the contract because it allows them to tap services on an as-needed basis across a wide spectrum of activities. One important task for scientists is writing proposals and the contract has language that allows for support services in the development and writing of proposals in response to NASA HQ Announcements of Opportunity (AOs). Although the amount of work done supporting proposals has been small the Science Directorate felt it was important to have that capability available. The previous contract was set to expire in 2011 and the competition for the follow-on contract is in process as a Small Business Set-Aside. The new contract is envisioned to be on a completion-type basis. It is also expected to be highly competitive and several potential offerors have already expressed interest.

A prospective offeror, ABC Corp (who is not the incumbent), has expressed great interest in proposing on the new Science Analysis contract and has invested in teaming arrangements with other companies to prepare its bid. ABC has been awarded several other NASA contracts, including one recent competitive award by the Langley Research Center (LaRC) for support to the HQ Science Mission Directorate (SMD), to assist in evaluating proposals submitted to HQ Announcements of Opportunity (AO) for science flight investigations. Given the nature of this requirement, the LaRC contract includes the Limitation of Future Contracting clause, which precludes ABC from participating in other contracts that involve the development of such AO proposals.

## Identifying Organizational Conflict of Interest

Two weeks prior to the scheduled posting of the final RFP for the Science Analysis contract, a question was received from ABC Corp requesting information of the level of proposal development support envisioned under the upcoming contract. At about the same time, an inquiry was received from the LaRC Contracting Officer for the ABC contract regarding the Science Analysis scope of work. Because the Statement of Work does not specifically call out proposal development support, ABC's assumption was that no such work (at least of any significance) would be required under the contract, and ABC related that information to LaRC in the hopes of avoiding any possible Organizational Conflict of Interest (OCI)<sup>1</sup> issues. The Goddard Procurement Office also looked at the SOW and initially didn't see any cause for alarm around a potential OCI issue. Mike McGrath explained this first quick review:

*"OCI is a complex issue for contracting, since often no two situations are alike, and determining whether a conflict can be mitigated or not can be very subjective. Obviously, we'd rather not have any OCI issues to deal with. In this case, when we first looked at the Science Analysis SOW, we didn't see anything that caught our attention as OCI. Could we have looked harder? Sure but we were also hoping to not have to deal with an OCI because we had plenty to do as it was to get the final RFP out on the street, so that human tendency to not see what you don't want to see might have played a role too."*

However, upon closer inspection by the GSFC of specific work activities contained in an addendum to the SOW, it was determined that a relatively small amount of proposal development work could be identified under the predecessor contract, and was expected to continue. In addition, upon further discussion with GSFC science users of the Science Analysis contract, it was determined that some amounts of proposal work was also integrated with the research efforts, but could not be easily quantified as there had been no attempts previously to separately track the efforts. It was suggested that the proposal work could be removed from the SOW to avoid any possibility of OCI but the Science Directorate wanted the capability to remain in case they had need for more proposal help in the future. Mike reflected on where this left the procurement team:

*"The OCI issue was creeping up on us and after these first conversations we realized we would have to chase it to ground. We might have ignored it a little bit at first since it wasn't in the basic SOW but we realized it was a potential problem for ABC on this contract. Potentially Goddard Scientists could be developing a proposal in response to an AO with Contractor support. Then the same Contractor would be helping HQ evaluate that proposal. That would be a clear OCI problem. Once we saw it, it became clear what we had to do."*

After more inquiry LaRC procurement raised a second question in their OCI assessment about the scope of new Science Analysis to include work to implement missions that were selected under NASA HQ AO's. An examination of the SOW found no specific reference to implementing AO missions, but once again, the more detailed SOW Addendum referred to some modest level of instrument development

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<sup>1</sup> See [https://www.acquisition.gov/far/current/html/Subpart%209\\_5.html#wp1078823](https://www.acquisition.gov/far/current/html/Subpart%209_5.html#wp1078823) the FAR section on OCI (subpart 9.5).

for missions that were previously selected under AO's. Goddard Science Directorate again took the position that the scope of work needed to remain flexible enough to accommodate this type of mission development work in the future.

ABC insisted that neither of the above situations causes a conflict of interest for them, and they should be allowed to compete for new Science Analysis contract. Their position is based on the fact that the amount of work potentially required in either AO proposal development or AO mission implementation is insignificant, with the vast majority of work being in unrelated areas. ABC also proposes a mitigation strategy that would send any work that did materialize in either of these areas to one of their subcontractors, with these subs being firewalled such that ABC would have no influence over this work. Goddard and LaRC worked this issue in tandem though the final call was LaRC's since they had the contract with ABC, which was the source of the potential OCI for Goddard's Science Analysis contract. Mike reflected on the inquiry:

*"ABC argued very strongly that the work in question was very small and limited in scope. In the past, a relatively small amount of work had been done in this area under the contract and it was therefore insignificant. However, when we asked the Science Directorate about the amount of proposal work they expected in on the new contract, they were very clear that it was uncertain and could expand to a larger amount. It all depended on the proposals, the AO's, how busy people were and what the stakes were. If they needed support to win a key proposal they would certainly call upon their contractors to step up and help. This was kind like an OCI that 'now you see it'—'now you don't' because it was task driven so if there was no task technically they wouldn't be doing something that was in conflict. It really was a judgment call at first until we went back and asked more questions."*

The Contracting Officer at LaRC took the arguments of ABC and their proposed OCI mitigation strategy into account and determined that it was not feasible to fully mitigate the potential for 'undue influence' within ABC for the following logic:

1. ABC could help develop a proposal at Goddard under the Science Analysis contract
2. ABC could help evaluate that proposal at HQ through the LaRC contract
3. ABC could stand to gain implementation work if the Goddard proposal was selected
4. Because ABC could stand to gain under Science Analysis, this could bias them to favor Goddard proposals in their evaluations under the LaRC contract.

The mitigation strategy might technically separate the work responsibility, but not the conflict since the sub-contractor still worked for ABC. Now the question was how to deal with OCI in the procurement process? Goddard could not preclude ABC from bidding outright. First LaRC warned ABC that if they were awarded the Goddard Science Analysis contract, they would be in violation of their contract to support HQ proposal evaluations. Finally Goddard amended the RFP to include detailed OCI plans to be evaluated under Mission Suitability. Mike sighed:

*"How did this become such a big issue so late in the process?"*

## Appendix: FAR Section on OCI

### Subpart 9.5—Organizational and Consultant Conflicts of Interest

[these are excerpts: see the FAR section for full details]

#### 9.504 Contracting officer responsibilities.

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to—

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see [9.506](#)).

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see [9.506](#)).

#### 9.505 General rules.

The general rules in [9.505-1](#) through [9.505-4](#) prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Some illustrative examples are provided in [9.508](#). Conflicts may arise in situations not expressly covered in this section [9.505](#) or in the examples in [9.508](#). Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in [2.101](#)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.